



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

H.C. SUCCESSION CAUSE NO. 465 OF 1991

KIMANI MWAURA APPLICANT

V E R S U S

THIONG'O MWAURA RESPONDENT

R U L I N G

Before me is an application to make an award dated 12th June, 2002 a judgment of the court. According to the applicant there is no objection or an appeal filed against the award of Kiambu District Land Tribunal.

As against this application, the Respondent has filed grounds of opposition stating inter alia that there is an appeal pending at the Provincial Appeal Tribunal, Nyeri and that fact this applicant has denied in his affidavit and before this court. It is worth noting that the respondent has not filed any replying affidavit to substantiate its ground that an appeal is filed. Thus the application can be heard ex-parte so to speak. As per section 8 of the Land Disputes Tribunals Act the parties aggrieved by the decision of the Tribunal may file the appeal within thirty days of the decision. The decision of the elders in this matter was made on 4th January, 2001 and in my view the direction of the Deputy Registrar of 12th June, 2002 is not valid and was made without jurisdiction. The provisions of section 7 of the Act are also quite clear and are worded in mandatory form.

I further note that the respondent has not also fulfilled the requirement of section 8 so far as filing of an alleged appeal is concerned.

There was nothing to stop the Respondent to prove that he has filed the appeal although belatedly. Except for a letter purporting to have been signed for Provincial Commissioner nothing is before me.

Under the circumstances, the application dated 19th August, 2002 shall have to be allowed by me, and I do allow it as prayed.

Dated and delivered at Nairobi this 19th day of December,

2003.

K. H. RAWAL

JUDGE.



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